

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ZACHERY RYAN MICHEAL
DAVIS, Minor.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

EDWARD T. McCASKILL,

Respondent-Appellant,

and

RHONDA FELICE DAVIS and ERNEST EARLY,

Respondents.

In the Matter of JASON DSHAWN DAVIS and
MYCAH GABREAL DAVIS, Minors.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

ERNEST EARLY,

Respondent-Appellant,

and

RHONDA FELICE DAVIS and EDWARD T.
McCASKILL,

Respondents.

UNPUBLISHED
April 6, 2006

No. 265192
Wayne Circuit Court
Family Division
LC No. 03-424248-NA

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Before: Smolenski, P.J., and Owens and Donofrio, JJ.

PER CURIAM.

In these consolidated appeals, respondent Edward T. McCaskill appeals as of right from the order terminating his parental rights to the minor child, Zachery Davis, under MCL 712A.19b(c)(i), (g), (i), and (j), and respondent Ernest Early appeals as of right from the same order, which terminated his parental rights to the minor children, Jason Dshawn Davis and Mycah Gabreal Davis, under MCL 712A.19b(a)(ii), (c)(i), (g), and (j).¹ We affirm. These appeals are being decided without oral argument pursuant to MCR 7.214(E).

Both respondents challenge the sufficiency of the evidence for termination of their parental rights. The trial court did not clearly err by finding that at least one statutory ground for termination of respondents' parental rights was established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The evidence clearly established that respondent Early deserted the children for more than 91 days and failed to seek custody of them during that time. MCL 712A.19b(3)(a)(ii). Respondent Early's testimony indicated that he deliberately refrained from participating in any efforts at reunification during most of this case because he felt that respondent mother was "carrying the ball." For a period of approximately one year, he failed to visit the children or to answer correspondence from the petitioner. Termination of respondent Early's parental rights under MCL 712A.19b(3)(g) and (j) was also appropriate. Respondent Early's failure to visit the children for approximately one year during this matter constitutes a failure to provide proper care and custody within the meaning of MCL 712A.19b(3)(g). His notable lack of resolve throughout this matter strongly suggests that he will not be able to provide proper care and custody for the children within a reasonable time. *Id.* Even after respondent Early began to visit the children in May 2005, he was late for two visits, once by 45 minutes and once by 15 minutes, and missed two visits between May 27 and June 17, 2005. Respondent's judgment concerning the children is placed in serious doubt by his decision to allow respondent mother to "carry the ball" throughout a period that included a four-month incarceration and two relapses into drug use on her part. This evidence leaves no impression that the trial court made a mistake by finding that there was no reasonable likelihood that respondent Early would be able to provide proper care and custody for the children within a reasonable time. MCL 712A.19b(3)(g); *In re Terry*, 240 Mich App 14, 22; 610 NW2d 563 (2000). The evidence of respondent Early's abandonment and long-term neglect of the children equally supports the trial court's conclusion that they are likely to be harmed if returned to his care. MCL 712A.19b(3)(j).

¹ The court also terminated the parental rights of respondent Rhonda Felice Davis, the mother of all three children, but she has not appealed that order.

Respondent Early's claim that he was not provided services directed toward reunification warrants no relief, because he did not make himself available to receive services. Respondent Early knew in October 2003 that the children were in the custody of the Department of Human Services. The record indicates that letters were sent to respondent Early in July 2004 by regular and certified mail asking him to contact the agency, with no response. In April 2005, respondent Early failed to answer telephone calls from the foster care worker to schedule visits with Mycah and Jason. While the agency has a duty to make reasonable efforts toward reunification, MCL 712A.18f(1), (2), (4), it can only do so if the parent makes himself available for services. Where the parent deliberately refrains from visiting with his children and opts not to answer the communications of the agency, it is difficult to see what more the agency could do toward reunification of that parent with the children.

Respondent McCaskill's parental rights were properly terminated under MCL 712A.19b(3)(i) based upon the prior termination of his parental rights to four other children for neglect and physical abuse. The opinion terminating his parental rights to three of those children indicated that he visited sporadically, was hostile and uncooperative with workers, and inconsistent with therapy. It is therefore clear that prior efforts to rehabilitate respondent McCaskill were unsuccessful. MCL 712A.19b(3)(i). Termination of respondent McCaskill's parental rights under MCL 712A.19b(3)(g) and (j) was also supported by the evidence. Respondent McCaskill's failure to comply with his treatment plan is evidence of his failure to provide proper care and custody. *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003). Throughout the lengthy pendency of this matter, respondent McCaskill failed to complete therapy, to consistently provide drug screens, or to obtain suitable housing for the children. Respondent McCaskill's abuse of his other children, as well as his prior conviction of second-degree child abuse against a child not his own, is probative of how he would treat Zachery. *In re AH*, 245 Mich App 77, 84; 627 NW2d 33 (2001); *In re Laflure*, 48 Mich App 377, 392; 210 NW2d 482 (1973). Thus the trial court was amply warranted in concluding that respondent McCaskill would not be able to provide proper care and custody for Zachery within a reasonable time, MCL 712A.19b(3)(g), and that there was a reasonable likelihood that the child would be harmed if placed in his care. MCL 712A.19b(3)(j).²

Respondent McCaskill asserts on appeal that the agency failed to make reasonable efforts toward reunification. This is a case, however, where efforts at reunification were not required as a matter of law because respondent McCaskill's parental rights to other children were involuntarily terminated. MCL 712A.19a(2)(c). In any event, the record indicates that respondent McCaskill was provided services but failed to take full advantage of them.

² We conclude that MCL 712A.19b(3)(c)(i) was erroneously applied to both respondent fathers. None of the conditions of adjudication related to respondent McCaskill, who was not named in the initial petition. The only condition of adjudication possibly relating to respondent Early was domestic violence. Assuming that domestic violence, which was not alleged in the initial petition, was a condition of adjudication relating to respondent Early, there was no subsequent evidence concerning this issue and no evidence that this condition continued to exist. However, the trial court's erroneous reliance upon statutory subsection (c)(i) does not affect the outcome of this appeal because termination of parental rights need be supported by only one statutory subsection. *In re SD*, 236 Mich App 240, 247; 599 NW2d 772 (1999).

Finally, the trial court did not clearly err by finding that the children's best interests did not preclude termination of both respondent fathers' parental rights. MCL 712A.19b(5). Zachery has never been in the care of respondent McCaskill, having been removed from respondent mother within days of birth. The record contained no evidence to suggest that termination would be clearly contrary to the best interests of Zachery.

The evidence indicated that respondent Early had a bond with Mycah and Jason, albeit a weak one. However, given respondent Early's long-term neglect and abandonment of the children, considering the lack of a strong bond, and also noting that at the time of the termination hearing he continued to lack suitable housing for them, we are not left with the impression that the trial court made a mistake by finding that termination was not clearly contrary to the best interests of the children. *In re Terry, supra*, 240 Mich App 22.

Affirmed.

/s/ Michael R. Smolenski

/s/ Donald S. Owens

/s/ Pat M. Donofrio